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SX-2023-CV-00112

TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

Andrew Russell,

Plaintiff,

v.

Lockheed Martin Corp., *and*
John Doe, Inc.

Defendants,

SX-2023-CV-_____

Complex Litigation Division

ACTION FOR DAMAGES

Jury Trial Demanded

COMPLAINT

Plaintiff Andrew Russell brings this action for damages under the laws of the United States Virgin Islands, demands a trial by jury, and makes the following allegations based on information, belief, and investigation of counsel, except those allegations that pertain to Plaintiff, which are based on personal knowledge:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a citizen and resident of Baytown, Texas of the United States.
2. Defendant Lockheed Martin Corp. is a Maryland corporation, having its principal place of business in Maryland. It is subject to the specific personal jurisdiction of this Court. It is the successor-in-interest to Martin Marietta Corp., Martin Marietta Aluminum Properties Corp., Martin Marietta Aluminum Corp., Martin Marietta Alumina Corp., Harvey Aluminum, Inc., and Harvey Alumina, Inc.
3. John Doe, Inc., is currently in an alleged involuntary Chapter 7 bankruptcy, under information and belief, to be spurious and specious. Defendant John Doe will be added as a Defendant when this bankruptcy is dismissed or when any automatic stay is lifted, as the Plaintiff intends to proceed against John Doe's legacy third-party general liability insurance policies – which are not considered an asset of the estate in bankruptcy.
4. This Court has subject matter jurisdiction pursuant to 4 V.I.C. § 76.

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5. Venue in this District is proper pursuant to 4 V.I.C. § 78 because the conduct complained of in this Complaint was carried out in substantial part within this judicial division.

FACTUAL ALLEGATIONS RE: THE PLAINTIFF

6. Plaintiff worked at the Alumina Refinery from 1971 to 1973.

7. During his work at the Alumina Refinery, Plaintiff worked as a pump operator.

8. In the course of his employment at the Alumina Refinery, Plaintiff was exposed to bauxite ore dusts (and their constituents and waste products), caustic soda, asbestos-containing materials (“

9. Plaintiff was exposed to various toxic substances present at the Alumina Refinery, including asbestos-containing materials and toxic substances.

10.

11. Plaintiff was not a certified B-reader) a person in a position of consideration of Plaintiff's health.

12. Plaintiff's respiratory capacity, and his ability to breathe, diminished over time due to his exposure to toxic substances, resulting in a diminished lung capacity, and

13. Plaintiff's exposure to various toxic substances during his work at the Alumina Refinery, including asbestos-containing materials, caustic soda, and bauxite ore dusts, resulted in a diminished lung capacity, and

14. Plaintiff's injuries are current and will continue for the rest of his life. He seeks recompense for his pain and suffering; his medical bills and anticipated medical needs in the future; and the diminution in quality and enjoyment of his life.

15. Plaintiff fears the progression of his respiratory symptoms and reasonably fears that he may develop cancer as a result of persistent exposure to toxic materials and substances.

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16. Plaintiff is also at a medically and statistically significant increased risk of developing lung cancer, mesothelioma, and other cancers.

17. Plaintiff also seeks punitive damages, as Defendants' actions and inactions, separately considered, were outrageous because of a reckless indifference to Plaintiff's rights.

FACTUAL ALLEGATIONS VIS-À-VIS INDUSTRIAL EXPOSURES

18. The U.S. Federal Government has long regulated the limits of industrial exposure to minerals, metals, chemicals, and other agents in the workplace. And the U.S. Virgin Islands has long regulated ei

19. toxic dusts
through so and worker
monitoring

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reduce all d dust levels
must be giv equipment,
including re

21. 2000. The
Alumina Refinery refined bauxite ore into alumina (aluminum oxide).

22. Harvey Aluminum, Inc. built the Alumina Refinery. It leased the Alumina Refinery to its wholly-owned subsidiary, Harvey Alumina, Inc., which ran the refining operations and handled everything except for maintenance activities. Harvey Aluminum owned the appurtenances and equipment at the Alumina Refinery, which appurtenances and equipment were leased to Harvey Alumina. Harvey Aluminum also entered long-term contracts with mining companies for the purchase of bauxite ore to the Alumina Refinery. It shipped or arranged the shipment of purchased bauxite ore

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to the Alumina Refinery for refinement. Harvey Aluminum changed its name to Martin Marietta Aluminum, Inc. in approximately 1972.

23. Martin Marietta Aluminum, Inc. (“M/M Aluminum”) succeeded to Harvey Aluminum’s rights and obligations under the bauxite ore supply agreement(s). Harvey Alumina assigned its leasehold to Martin Marietta Alumina, Inc. (“M/M Alumina”), which assumed the obligations of the lease. As under previous management, M/M Alumina ran the bauxite refining operations, except for maintenance activities which M/M Aluminum handled. Also as under previous ownership, refinery for refining.

24. Properties, Inc. (“MM ls Alumina Company (

25. relevant to this action. ie Alumina Refinery, V 00 to 1995, Glencore si

26. .CO owned and/or ope maintenance services.

27. Bauxite is a naturally occurring material comprised of hydrated aluminum oxides and aluminosilicates, iron oxides, titanium dioxide, silica, beryllium, and mixtures of other materials; including, quartz, clay minerals, gibbsite [Al(OH)], boehmite [AlO(OH)], and diaspor [AlO(OH)]. Bauxite is the principle ore of alumina (Al₂O₃).

28. During the refining process, bauxite ore is, among other activities, crushed and ground, which continuously creates large amounts of dust. In his work at the Alumina Refinery, Plaintiff was

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in constant contact with, and exposed to, this unrefined bauxite dust and its constituents.

29. Caustic soda is added to the ground ore, some of which becomes airborne. In his work at the Alumina Refinery, Plaintiff was in frequent proximity to and inhaled caustic soda dust.

30. The refinement process involves many hot processes that require the maintenance of high temperatures. To that end, the Alumina Refinery used ACM to insulate vessels, machinery, and pipe. In his work at the Alumina Refinery, Plaintiff was in frequent proximity to and inhaled ACM.

31. The finished alumina product is a white/silver powder. The alumina is highly susceptible to the Alumina Refinery, Plaintiff was in frequent proximity to and inhaled alumina dust.

32. In his work at the Alumina Refinery, Plaintiff was in frequent proximity to and inhaled dusts and fumes, including but not limited to, sometimes called “red dust,” which contains iron oxide (Al_2O_3), silicon dioxide (TiO_2), potassium, sodium, arsenic (As), lead, mercury, radioactive uranium and plutonium. In his work at the Alumina Refinery, Plaintiff was in frequent proximity to and inhaled these dusts and fumes.

33. In his work at the Alumina Refinery, Plaintiff was in frequent proximity to and inhaled bauxite ore dust, its constituents, and refined alumina. Research shows that exposure to these elements (or mixtures thereof) in industrial settings can cause serious medical problems, including decreased FEV1, radiographic abnormalities, increased opacities, upper and lower respiratory symptoms (shortness of breath, wheeze, chest tightness, rhinitis), pulmonary fibrosis, mixed dust pneumoconiosis, interstitial fibrosis, fibrotic lesions, parenchymal changes, lung cancer, and aluminosis.

CAUSE OF ACTION AGAINST LOCKHEED MARTIN

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AS SUCCESSOR-IN-INTEREST TO MARTIN MARIETTA CORP.

Count 1 – Negligent Undertaking

34. Plaintiff hereby realleges and incorporates by reference all previous paragraphs as if fully set forth herein. Lockheed Martin Corp. is liable to Plaintiff under Section 324A of the Restatement (Second) of Torts, which articulates a sound rule for the Virgin Islands, as the successor-in-interest to Martin Marietta Corp. (“M/M Corp.”).

35. The Alumina Refinery’s safety department was chronically understaffed. It never had an industrial safety regulations and good safety

36. , education, knowledge, l by fugitive dusts, including e.

37. r to address patent safety er, the staff lacked the e used by the chronic inh

38. mpany – to fill these de

39. M/M Corp. issued its own safety policies, which were much more robust than any policies that were issued and in-effect locally. That’s because M/M Corp. had the appropriate staff, with the appropriate expertise, to develop a sufficient safety policy. M/M Corp.’s safety policies, by their own terms, applied to the Alumina Refinery.

40. M/M Corp. had a robust respiratory policy, but it did not make this policy or any of the accompanying educational materials available to the managers on St. Croix. Ultimately, M/M Corp.’s respiratory policies were not followed at the Alumina Refinery.

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41. But this failure went a step further. M/M Corp. misled the staff on St. Croix to believe that bauxite was non-toxic. Workers at the Alumina Refinery relied on M/M Corp. to provide hazards information. But the local staff was of the mistaken belief that bauxite was merely a nuisance dust because they lacked the technical expertise to understand that the term “nuisance” did not mean that the dust was inert if inhaled. The local staff relied on M/M Corp. to provide them with MSDS sheets because they were not available locally on St. Croix. However, even when these sheets were made available, they were ignored because, as M/M Corp. told the Alumina Refinery that bauxite ore was safe to brea

42. dents M/M
 Aluminum i programs.
 However, t rwise – as a
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43. ety analyses
 from M/M M/M Corp.
 follow up w

44. : job tasks;
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 exposures; s, including
 bauxite ore and its dusts.

45. M/M Corp. conducted bi-annual plant audits and inspections The audits extended to verifying compliance with M/M Corp. respiratory policy, the vitality of its occupational safety health programs, whether it was conducting job safety analyses, etc. M/M Alumina relied upon M/M Corp.’s audits because it was unable to adequately screen for potential problems with its own resources.

46. However, M/M Corp. failed to fulfill this audit function, as it failed to recognize that the Alumina Refinery was not assessing the possible damage that airborne bauxite dust and other

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fugitive dusts were causing to the workforce, but even worse, failing to ensure that the Alumina Refinery corrected these glaring deficiencies. As a result, M/M Corp. couldn't effectively perform its audit role.

47. These failures to appropriately audit the operations of the Alumina Refinery were fundamental in light of how the Martin Marietta family of companies were structured. M/M Corp.'s subsidiaries had only the basic knowledge and staffing necessary to complete their immediate tasks. Anything beyond that immediate task was need-to-know, which required the input and assistance of corporate. liaries were

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 and in 1981

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50. 1981 by the
 corporate family's lone industrial hygienist. The survey recommended a robust sampling program to assess the level of suspended dust particles; that the St. Croix plant conduct pulmonary function testing and respirator fit tests; and that St. Croix develop its own sampling capacity. M/M Corp. knew that these critical safety policies should have been in place for years, and yet still it failed to adequately follow up on and ensure that the Alumina Refinery implemented these recommendations. The Alumina Refinery eventually purchased some air sampling equipment, but that equipment largely went unused.

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51. M/M Corp. undertook to render services to its three subsidiaries at the Alumina Refinery—M/M Aluminum, M/M Alumina, and MMAP (collectively, “M/M Subsidiaries”). It should have recognized the services it provided to its M/M Subsidiaries and/or the Alumina Refinery were necessary for the protection of Plaintiff, generally or in particular.

52. M/M Corp. failed to exercise reasonable care. This failure to exercise reasonable care increased the risk of harm to Plaintiff. M/M Corp. undertook to perform a duty owed by one or more M/M Subsidiaries to Plaintiff. The M/M Subsidiaries and/or Plaintiff relied on M/M Corp. to fulfill its undertak

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Count 2 –

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interest to Martin Marietta Aluminum, Inc.

55. M/M Aluminum was a legal possessor of the Alumina Refinery from 1968 to 1985, and it was a possessor during Plaintiff’s working years at the Alumina Refinery.

56. M/M Aluminum had knowledge of the harmful nature of, and danger posed by, bauxite and alumina dusts (and their constituents) at all times while Plaintiff was on the Alumina Refinery premises. It had a duty to exercise reasonable care including providing Plaintiff with a safe work environment and warning Plaintiff of any dangers that it could not make safe.

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57. M/M Aluminum knew or should have known that these exposures posed a foreseeable and unreasonable risk of harm to Plaintiff and others. This foreseeable harm could have been prevented if M/M Aluminum had implemented and enforced proper safety measures at the Alumina Refinery, and had also warned Plaintiff of the dangers.

58. M/M Aluminum knew or should have known that Plaintiff would not discover or realize the danger, as it was in a superior position of power and knowledge.

59. M/M Aluminum breached its duty by failing to use reasonable care to protect Plaintiff of the dang

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dust exposures, as well as exposure to as bauxite's hazardous constituents and waste products;

f. Failing to timely and appropriately train Plaintiff and his co-workers; and

g. Failing to timely and appropriately engage in medical surveillance of exposed persons, including Plaintiff; to timely and appropriately monitor workforce exposure and health, as well as that of their families, including that of Plaintiff.

61. The failures of M/M Aluminum were also in violation of the law. At all relevant times, the V.I. government proscribed causing or permitting materials to be handled, used, constructed,

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altered, repaired, or demolished without taking appropriate precautions to prevent particulate matter from becoming airborne. In particular, the following precautions are required, among others:

- a. The use, where possible, of water or suitable chemicals for the control of dusts in quarrying operations;
- b. The application of asphalt, water, or suitable chemicals on dirt roads, materials, stockpiles, and other surfaces that can give rise to airborne dust; and
- c. The installation and use of hoods, fans, and fabric filters to enclose and vent the

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performance of M/M Aluminum's agreement would have prevented. M/M Aluminum failed to exercise reasonable care in performing its obligation to keep the Alumina Refinery in a state of repair.

65. The Alumina Refinery is dirty by design. Extracting alumina (aluminum oxide) from raw bauxite ore generates a large and continuous amounts of respirable dust from moving it with heavy machinery, shoveling it, crushing it, etc. Mud tailings are dried in ponds, and during the dry season, this mud becomes dirt, and once again the workforce is exposed to respirable bauxite dusts and alumina dusts, including their constituents and waste products.

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66. M/M Aluminum knew, or by the exercise of reasonable care could have discovered, that this condition of the Alumina Refinery involved an unreasonable risk of harm to the workforce on the premises and members of their families. It had reason to suspect that M/M Alumina would not correct the condition before admitting the workforce to the Alumina Refinery. And it failed to exercise reasonable care to discover or to remedy the condition or otherwise to protect the workforce and their families against the condition.

67. M/M Aluminum directly and proximately caused, and is legally responsible and liable for, Plaintiff alumina, as well as the l

Count 3 –

68. graphs as if fully set fo testatement (Second) of successor- in-interest t

69. ie Alumina Refinery fo

70. f to use the bauxite ore, as well as expect that Plaintiff could be endangered by the probable uses of bauxite ore—namely, refinement. It knew or had reason to know that bauxite ore is dangerous or likely to be dangerous during the refinement process. It had no reason to believe that the Alumina Refinery or Plaintiff would realize the dangerous condition of bauxite ore.

71. M/M Aluminum failed to exercise reasonable care to inform either the Alumina Refinery or Plaintiff of the dangerousness of bauxite ore or the facts which make bauxite ore likely to be dangerous.

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72. Plaintiff was harmed as a result of M/M Aluminum's failures. M/M Aluminum directly and proximately caused, and is legally responsible and liable for, Plaintiff's exposure to bauxite dusts and its constituents, as well as the harm and damages Plaintiff has sustained as a result of that exposure.

Count 3(b) – Refinery Machinery & Equipment as Chattel

73. Prior to 1986, M/M Aluminum leased refining machinery, appurtenances, and equipment—chattels—to M/M Alumina for use at the Alumina Refinery.

74. The Alumina Refinery is outfitted with machinery and equipment designed to move and pulverize bauxite into fines, which are then transported by chutes, ball mills, and grinders, designed to create and maintain a fine, uniform particle size distribution spread large enough to be carried by air force at the Alumina Refinery. This equipment is designed to create and maintain a fine, uniform particle size distribution.

75. M/M Aluminum failed to use the equipment in a safe and proper manner, and the use of the equipment at the refinery made it probable that Plaintiff was harmed by the equipment.

76. M/M Aluminum knew or should have known that the equipment was dangerous and that the equipment was likely to cause harm to Plaintiff. M/M Aluminum had no reason to believe that the equipment was dangerous and that the equipment was likely to cause harm to Plaintiff. M/M Aluminum failed to exercise reasonable care to inform either M/M Alumina or Plaintiff of the dangerousness of refinement machinery and equipment or the facts which make refinement machinery and equipment likely to be dangerous.

77. Consequently, M/M Aluminum directly and proximately caused, and is legally responsible and liable for, Plaintiff's exposure to bauxite dusts and its constituents, as well as the harm and damages Plaintiff has sustained as a result of this exposure.

Count 3(c) – Heavy Equipment as Chattel

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78. Prior to 1986, M/M Aluminum leased heavy machinery—chattels—to M/M Alumina for use at the Alumina Refinery. Workers at the Alumina Refinery used bulldozers, backhoes, cranes, dump trucks, and other large machinery to unload bauxite ore from vessels, position the raw bauxite ore in the storage shed, load raw bauxite ore onto conveyers, and to cleanup excess materials.

79. The use of heavy equipment at the Alumina Refinery created and spread large amounts of bauxite dusts and its constituents. Consequently, the workforce at the Alumina Refinery is invariably exposed to and inhales bauxite ore dusts and its constituents.

80. Prior to the late 1980s, M/M Aluminum leased heavy machinery to the Alumina Refinery for use at the Alumina Refinery. Workers at the Alumina Refinery used bulldozers, backhoes, cranes, dump trucks, and other large machinery to unload bauxite ore from vessels, position the raw bauxite ore in the storage shed, load raw bauxite ore onto conveyers, and to cleanup excess materials.

81. The use of heavy equipment at the Alumina Refinery created and spread large amounts of bauxite dusts and its constituents. Consequently, the workforce at the Alumina Refinery is invariably exposed to and inhales bauxite ore dusts and its constituents. M/M Aluminum failed to expose the workforce at the Alumina Refinery to the dangers of heavy equipment. M/M Aluminum knew or should have known that heavy equipment was dangerous and that the use of heavy equipment at the Alumina Refinery was dangerous. M/M Aluminum failed to expose the workforce at the Alumina Refinery to the dangers of heavy equipment. M/M Aluminum failed to expose the workforce at the Alumina Refinery to the dangers of heavy equipment.

82. M/M Aluminum is legally responsible for the harm and damages Plaintiff has sustained as a result of this exposure.

Count 4 – Chattel Unlikely to be Made Safe for Use

83. Plaintiff hereby realleges and incorporates by reference all previous paragraphs as if fully set forth herein. Lockheed Martin is liable to Plaintiff under Section 389 of the Restatement (Second) of Torts, which articulates a sound common law rule for the Virgin Islands, as the successor-in-interest to M/M Aluminum.

Count 4(a) – Bauxite as Chattel

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84. M/M Aluminum supplied bauxite ore—a chattel—to the Alumina Refinery for use.

85. While M/M Aluminum provided warnings and/or MSDS sheets to the operator(s) of Alumina Refinery, those warnings and MSDS sheets went unheeded. M/M Aluminum knew or should have known that its warnings and/or MSDS sheets were not being communicated to the workforce at the Alumina Refinery. M/M Aluminum knew or should have known that the bauxite ore was unlikely to be made reasonably safe before being put to the use in the manner expected—namely, refinement into alumina.

86. M/M Aluminum is negligent in that Plaintiff would be injured by the negligent character of bauxite ore.

87. M/M Aluminum is negligent and liable for, Plaintiff's injuries, because Plaintiff sustained an injury.

88. M/M Aluminum is negligent in the equipment—chattels—to be provided with machinery and equipment that includes components.

89. M/M Aluminum knew or should have known that the machines and equipment were unlikely to be made reasonably safe before being put to the use in the manner expected—namely, used in the processing of bauxite ore into alumina (aluminum oxide).

90. During refinement operations, these machines and equipment create and spread large amounts of bauxite ore dusts and its constituents. Consequently, the workforce at the Alumina Refinery was invariably exposed to and inhales bauxite ore dusts and its constituents.

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91. Plaintiff was a foreseeable user of the chattels, as well as endangered by the probable use of the chattels. He was ignorant as to the dangerous character of the machines and equipment was not contributorily negligent.

92. M/M Aluminum directly and proximately caused, and is legally responsible and liable for, Plaintiff's exposure to bauxite dusts and its constituents as a result of the dangerous machines and equipment, as well as the harm and damages Plaintiff sustained as a result of this exposure.

Count 5 – Chattel for Use by Person Known to be Incompetent

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94. [redacted] tel—to the
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95. [redacted] ne Alumina
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Refinery ov [redacted] policy and
failed to abide applicable government regulations.

96. M/M Aluminum should have expected that Plaintiff would be endangered by the use of bauxite ore at the Alumina Refinery.

97. M/M Aluminum directly and proximately caused, and is legally responsible and liable for, Plaintiff's exposure to bauxite dusts and its constituents , as well as the harm and damages Plaintiff sustained as a result of this exposure.

Count 5(b) – Refinery Appurtenances as Chattel

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98. At all relevant times, M/M Aluminum leased refining machinery, appurtenances, and equipment—chattels—to M/M Alumina for use at the Alumina Refinery.

99. The Alumina Refinery is outfitted with machinery and equipment designed to move and pulverize bauxite ore. This machinery and equipment includes conveyor belts, chutes, ball grinders, digestors, etc. During refinement operations, these machines and equipment create and spread large amounts of bauxite ore dusts and its constituents. Consequently, the workforce at the Alumina Refinery is invariably exposed to and inhales bauxite ore dusts and its constituents.

100. The Alumina Refinery workers involved an unreasonable reason to know that there is inadequate respiratory protection provided by the use of supplied air equipment. The company is responsible and liable for, in applying the refinement process as a result of his exposure to bauxite ore dusts.

Count 5(c) – Heavy Equipment as Chattel

103. At all relevant times, M/M Aluminum leased heavy machinery—chattels—to M/M Alumina for use at the Alumina Refinery. Workers at the Alumina Refinery used bulldozers, backhoes, cranes, dump trucks, and other large machinery to unload bauxite ore from vessels, position the raw bauxite ore in the storage shed, load raw bauxite ore onto conveyers, and to cleanup excess materials.

104. The use of heavy equipment at the Alumina Refinery created and spread large amounts

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of bauxite dusts and its constituents. Consequently, the workforce at the Alumina Refinery is invariably exposed to and inhales bauxite ore dusts and its constituents.

105. M/M Aluminum knew or had reason to know that the owners and operators of the Alumina Refinery were using supplied heavy equipment in a manner that involved an unreasonable risk of physical harm to Plaintiff. In particular, M/M Aluminum knew or had reason to know that the Alumina Refinery owners and operators were incompetent, as they lacked an adequate respiratory policy and failed to abide applicable government regulations. M/M Aluminum should have expected that Plaintiff

106. M/M Aluminum was negligent and liable for, Plaintiff's injuries, the heavy equipment used to bauxite dusts and it

Count 6 –

107. M/M Aluminum's negligence graphs as if fully set forth in the statement (Second) of Plaintiff's successor-in-interest to

108. M/M Aluminum operated an international, vertically-integrated alumina production operation, which included mining raw ore, shipping raw ore, overseeing refinement, finding purchasers of refined alumina, and shipping raw alumina to purchasers.

Count 6(a) – Bauxite as Chattel

109. Prior to 1985, M/M Aluminum supplied bauxite ore—a chattel—to the Alumina Refinery for use. The bauxite ore was ultimately supplied to the employees at the Alumina Refinery, who refined the bauxite ore into alumina.

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110. M/M Aluminum should have expected that Plaintiff, other employees at the Alumina Refinery, and their respective families would be endangered by the probable use of the bauxite ore. It failed to exercise reasonable care to make the bauxite ore safe for the use for which it was supplied. It failed to exercise reasonable care to discover the dangerous condition or character of the bauxite ore it supplied. And it failed to inform Plaintiff or the other employees at the Alumina Refinery of the discover the dangerous condition or character of the bauxite ore it supplied.

111. Consequently, M/M Aluminum directly and proximately caused, and is legally responsible as the harm and damage

112 nances, and equipment-

113 ed to move and pulver chutes, ball grinders, di create and spread larg force at the Alumina Re ents.

114 he Alumina Refinery, and their respective families would be endangered by the probable use of the refining machinery, appurtenances, and equipment. It failed to exercise reasonable care to make the refining machinery, appurtenances, and equipment for the use for which it was supplied. It failed to exercise reasonable care to discover the dangerous condition or character of the refining machinery, appurtenances, and equipment it supplied. And it failed to inform Plaintiff or the other employees at the Alumina Refinery of the discover the dangerous condition or character of the refining machinery, appurtenances, and equipment it supplied.

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115. Consequently, M/M Aluminum directly and proximately caused, and is legally responsible and liable for, Plaintiff's exposure to bauxite dusts and its constituents, as well as the harm and damages Plaintiff sustained as a result of this exposure.

Count 6(c) – Heavy Equipment as Chattel

116. At all relevant times, M/M Aluminum leased heavy machinery—chattels—to M/M Alumina for use at the Alumina Refinery. Workers at the Alumina Refinery used bulldozers, backhoes, cranes, dump trucks, and other large machinery to unload bauxite ore from vessels, position the raw bauxite ore

117. in large amounts of bauxite Refinery is invariably e

118. the Alumina Refinery, a the heavy equipment. the use for which it was in condition or character o he discover the danger

119. Plaintiff is legally responsible and liable for, Plaintiff's exposure to bauxite dusts and its constituents, as well as the harm and damages Plaintiff sustained as a result of this exposure.

**CAUSES OF ACTION AGAINST LOCKHEED MARTIN,
AS SUCCESSOR-IN-INTEREST TO MARTIN MARIETTA ALUMINA, INC.**

Count 7 – Premises Liability

120. Plaintiff hereby realleges and incorporates by reference all previous paragraphs as if fully set forth herein.

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121. Lockheed Martin Corp. is liable to Plaintiff as a premise in accordance with the rule articulated in *Machado v. Yacht Haven, U.S.V.I., LLC*, 61 V.I. 373 (2014), as the successor-in-interest to M/M Alumina.

122. At all relevant times, M/M Alumina was a legal possessor of the Alumina Refinery.

123. M/M Alumina had knowledge of the harmful nature of, and danger posed by, bauxite and alumina dusts and its constituents, caustic fumes and materials, and asbestos at all times while Plaintiff was on the Alumina Refinery premises. It knew that the potential for exposure at the Alumina Refinery posed

124. Plaintiff with a safe work

125. implemented and enforced Plaintiff of the dangers.

126. or realize the danger,

127. protect Plaintiff by failing to environment.

128.

a. Failing to adequately monitor the concentration of bauxite and alumina dusts, caustic fumes and materials, and asbestos, as well as the dusts of its hazardous constituents and waste products, in the Alumina Refinery;

b. Failing to take appropriate safety precautions regarding to toxic, carcinogenic, hazardous, and/or irritating dusts, fumes, and other substances;

c. Failing to provide and require the wearing of protective clothing;

d. Failing to provide effective masks, respirators, and/or fresh air sources;

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e. Failing to provide adequate changing rooms, showers, laundry, and other safety services for exposed workers;

f. Failing to post warning signs;

g. Failing to warn Plaintiff of the health risks associated with bauxite and alumina dusts, caustic fume and materials, and asbestos exposures, as well as exposure to as bauxite's hazardous constituents and waste products;

h. Failing to timely and appropriately train Plaintiff and his co-workers;

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under construction, materials, stockpiles, and other surfaces that can give rise to airborne dust;
and

c. The installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials.

130. M/M Alumina's failures to abide by Virgin Islands law constitutes negligence *per se*. Family members of workers at the Alumina Refinery, like Plaintiff, fall within the ambit of these legal protections, as it is precisely those exposed to materials that leave the premise that would be most

likely to be affected by the failure to abide.

131. Consequently, M/M Alumina directly and proximately caused, and is legally responsible and liable for, Plaintiff's exposure to bauxite, as well as the harm and damages Plaintiff sustained as a result of this exposure.

**CAUSES OF ACTION AGAINST JOHN DOE, INC. AS SUCCESSOR-IN-INTEREST
COSMOGONY II, INC. AS SUCCESSOR-IN-INTEREST TO GENERAL ENGINEERING CORP.**

Count 8 – Negligence

132 graphs as if
fully set for
133 ulted in the
release of a
134 iard against
and warn o tely train its
employees ly warn its
employees : oriate PPE.
135 It failed to
adequately rticular, the
machinery r, and as a
result, fugitive bauxite emissions were frequent.

136. Both instances of negligent presented foreseeable risks of harm—namely, that Plaintiff, his co-workers, and others would come into contact with and inhale an inordinate amount of ACM and bauxite dust.

137. GEC owed a duty of reasonable care under the circumstances. In this specific case, its duty was to perform its construction and maintenance duties with the due care necessary for a refinery contractor, with the understanding that the materials at the Alumina Refinery were dangerous and

required special precautions.

138. However, GEC violated its duty of reasonable care as detailed above.

139. GEC directly and proximately caused, and is legally responsible and liable for, the harm and damages caused by Plaintiff's exposure to bauxite ore, its hazardous constituents, its waste products, and asbestos.

NOTICE OF PUNITIVE DAMAGES

140. Plaintiff seeks punitive damages against Defendants.

141. Defendant's conduct was intentional, or done or
with a willful

142. Defendant's conduct was similar
conduct by Defendant, or
for the egregious

143. Defendant's conduct was similar to the conduct of the Virgin
Islands Ruler.

WHEREFORE,

a. Plaintiff requests that the Court award punitive damages;
b. Plaintiff requests that the Court award pretrial interest from the date of the initial Complaint through final judgment;

c. Plaintiff requests that the Court award his costs; and

d. The Court grant such additional relief as may be deemed just and proper.

Complaint

Andrew Russell v. Lockheed Martin Corp., et. al.

DATED: March 30, 2023

Respectfully submitted,



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